



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,414	01/27/2004	Stephen W. Foss	FOS 6080 P39 DIV4	2179
26486	7590	12/23/2005	EXAMINER	
PERKINS, SMITH & COHEN LLP ONE BEACON STREET 30TH FLOOR BOSTON, MA 02108			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,414

Applicant(s)

FOSS, STEPHEN W.

Examiner

Jennifer A. Boyd

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed October 17, 2005, have been entered and have been carefully considered. Claims 1 and 12 are amended, claims 23 – 35 are cancelled and claims 1 – 22 are pending. In view of Applicant's cancellation of claims 23 – 35, the Examiner has withdrawn the rejection over Emi in view of Rock. Despite this advance, the invention as currently claimed is found to be unpatentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1 – 22 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US 5,064,599) in view of Rock (US 6,194,332). The details of the rejection can be found in paragraph 3 of the Office Action dated July 13, 2005. The rejection is maintained.

Applicant has amended claims 1 and 12 to require that the core and sheath components are “co-extruded”. It should be noted that “co-extruded” is considered to be a process limitation and is given no patentable weight at this time. It is the position of the Examiner that the final product of Ando would be the same as Applicant. The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product.

Ando teaches that the ratio of the area of the low-melting component and the high-melting component is 30:70 to 70:30. Although Ando teaches a ratio in regards to area, it is

Art Unit: 1771

submitted that the weight range of the sheath and core would overlap with Applicant's claimed range.

Response to Arguments

4. Applicant's arguments filed October 17, 2005 have been fully considered but they are not persuasive.

Applicant argues that the independent claims as amended require that the fibers are co-extruded while Ando requires conjugated fibers. The Applicant argues that the fibers produced by the co-extrusion process of Applicant have a stronger adherence between the sheath and core and permits more uniform control over the sheath thickness relative to the additive particle size. It should be noted that Applicant's arguments do not suffice as evidence. The Applicant is required to provide evidence that the claimed product and the prior art product are different.

Applicant notes that the range recited by Ando is specified in terms of "area" rather than "weight" as claimed. The Examiner acknowledges this difference, however, it is submitted that the weight range of the sheath and core would overlap with Applicant's claimed range. The Applicant has not argued that Ando would not teach Applicant's weight ratio.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after


Art Unit: 1771


the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer Boyd
December 18, 2005


Ula C. Ruddock
Primary Examiner
Tech Center 1700